

200900151
(kae)

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
AT AKRON

IN RE:

Case No. 08-54634

Rebecca L. Lively

Chapter 13

Debtor

Chief Judge Shea-Stonum

**MOTION OF U.S. BANK, N.A.
FOR RELIEF FROM STAY
(PROPERTY ADDRESS: 130
CANTERBURY LANE (UNIT 30-
D), MEDINA, OHIO 44256)**

U.S. Bank, N.A., (the "Movant") moves this Court, under §§ 361, 362, 363 and other sections of the Bankruptcy Reform Act of 1978, as amended (the "Bankruptcy Code") and under Rules 4001, 6007, and other rules of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") for an Order conditioning, modifying or dissolving the automatic stay imposed by § 362 of the Bankruptcy Code. In support of this Motion, the Movant states:

MEMORANDUM IN SUPPORT

1. The Court has jurisdiction over this matter under 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C.

§ 157(b)(2). The venue of this case and this Motion is proper under 28 U.S.C. §§ 1408 and 1409.

2. On July 21, 2006, the Debtor listed above (collectively, the "Debtor") obtained a loan from **American Midwest Mortgage Corporation** in the amount of \$80,733.00. Such loan was evidenced by a promissory note dated July 21, 2006 (the "Note"), a copy of which is attached as Exhibit "A".

3. To secure payment of the Note and performance of the other terms contained in it, the Debtor executed a Mortgage dated July 21, 2006 (the "Security Agreement"). The Security Agreement granted a lien on the real and/or personal property (the "Collateral") owned by the Debtor, located at 130 Canterbury Lane (Unit 30-D), Medina, Ohio 44256, and more fully described in the Security Agreement.

4. The lien created by the Security Agreement was duly perfected by the filing of the Security Agreement in the office of the Medina County Recorder on August 1, 2006. A copy of the Security Agreement is attached to this Motion as Exhibit "B". The lien is the 1st lien on the collateral.

5. The Note and Security Agreement were transferred as follows:

The Note was transferred from American Midwest Mortgage Corporation to U.S. Bank, N.A. as evidenced by the endorsement on the Note. See Exhibit "A".

The Mortgage was transferred from American Midwest Mortgage Corporation to U.S. Bank, N.A. as evidenced by the assignment recorded on August 1, 2006 attached hereto as Exhibit "C".

6. The value of the Collateral is \$76,776.00. This valuation is based on Schedule D.

7. As of the date of this Motion, there is currently due and owing on the Note the outstanding balance of \$85,218.82, plus interest accruing thereon at the rate of 5.900% per annum (\$12.74 per day) from October 16, 2009.

8. Other parties known to have an interest in the Collateral are: Medina County Treasurer by virtue of Real Estate Taxes, upon which there is due approximately \$766.15.

9. Movant is entitled to relief from the automatic stay under §§ 362(d)(1) and/or 362(d)(2) for these reason(s):

Debtor has no equity in the Collateral and the Collateral is not needed by the Debtor for her reorganization. Movant believes that the collateral has a value of \$76,776.00. Including the Movant's lien, there are liens in an aggregate amount of \$85,984.97 on the Collateral.

Debtor has failed to provide adequate protection for the lien held by the Movant for the reason set forth below.

Debtor has failed to make periodic payments to Movant since the commencement of this bankruptcy case, which unpaid payments are in the aggregate amount of \$1,995.17, which consists of 2 payments at \$638.63 each from August, 2009 through September, 2009, 1 payment at \$694.57 for October, 2009, together with 2 late charges at \$25.55 each from August, 2008 through September, 2009, together with 1 late charge at \$27.78 for October, 2009, less debtor's suspense balance of \$55.54, as of October 15, 2009.

10. Movant has completed the worksheet attached as Exhibit "D".

11. This Motion conforms to the standard form adopted in this District except as follows: **See paragraph 8.**

WHEREFORE, Movant prays for an Order from the Court granting Movant relief from the automatic stay of §362 of the Bankruptcy Code to permit Movant to proceed under law and for such other and further relief to which the Movant may be entitled.

/s/ Steven H. Patterson
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OH Sup. Ct. Reg. No. 0073452
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CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing Motion for Relief from Stay of the secured creditor, U.S. Bank, N.A., was electronically transmitted on or about the 15th day of October, 2009 via the Court's CM/ECF system to the following who are listed on the Court's Electronic Mail Notice list.

Guy E Tweed, II, Esq.
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Keith Rucinski, Trustee
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Akron, OH 44308
efilings@ch13akron.com

Office of the U.S. Trustee
Howard Metzenbaum U.S. Courthouse
201 Superior Avenue
Cleveland, OH 44114
(Registered address)@usdoj.gov

The undersigned certifies that a copy of the foregoing Motion for Relief from Stay of the secured creditor, U.S. Bank, N.A., was transmitted on or about the 15th day of October, 2009 via regular U.S. mail, postage pre-paid:

Rebecca L. Lively
130 D. Canterbury Lane
Medina, Ohio 44256

Medina County Treasurer
144 North Broadway
Medina, Ohio 44256

/s/ Steven H. Patterson
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